



MARIJUANA LEGALIZATION FOR NON-MEDICAL PURPOSES

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QUESTIONS

Which states have legalized marijuana for non-medical purposes? What are the concerns about such legalization and how were they addressed? What effect has legalization had on crime in these states?

SUMMARY

In November 2012, voters in Colorado and Washington approved ballot initiatives that generally legalized the possession of small amounts of marijuana for non-medical purposes by adults age 21 and older in those states. They became the first two states to allow marijuana use for non-medical purposes. Both states regulate marijuana in a manner similar to alcohol.

The stated purposes of the Colorado measure include the efficient use of law enforcement resources, public revenue enhancement, and individual freedom. The stated intent of the Washington measure includes allowing law enforcement resources to focus on violent and property crimes, generating new tax revenue, and shifting marijuana away from illegal organizations into a tightly regulated system such as that which regulates alcohol.

Media reports suggest that concerns about marijuana legalization for non-medical purposes include (1) the drug's continuing illegal status under federal law; (2) public health risks, such as the possibility of increased marijuana use overall and increased access by children; and (3) public safety concerns, such as maintaining security at the facilities that grow and sell marijuana.

Colorado and Washington attempted to address some of those concerns through their laws or implementing regulations. For example, both states require businesses to be licensed to grow marijuana, manufacture marijuana-infused products, or sell marijuana or such products at retail. Both states' laws and regulations have various

provisions aimed at reducing minors' access to marijuana or exposure to marijuana advertising. Both states address recordkeeping and security issues and require testing of samples of marijuana and marijuana products. Washington's initiative requires the state's nonpartisan public policy institute to conduct cost-benefit evaluations of the initiative's implementation.

The first retail marijuana stores in Colorado opened in January 2014, and the first such stores were expected to open in Washington July 8, 2014. It is too soon to evaluate the impact of the laws on crime or how well the states have addressed concerns surrounding marijuana legalization for non-medical purposes.

While marijuana remains a Schedule I controlled substance under federal law, the U.S. Department of Justice (DOJ) announced in August 2013 that it would not challenge the Colorado or Washington laws as long as the states maintain strict regulatory control over marijuana.

COLORADO

On November 6, 2012, approximately 55.3% of Colorado voters approved [Amendment 64](#), which generally made it legal under state law for adults age 21 or older to possess or use up to one ounce of marijuana for non-medical use, including growing up to six plants (with no more than three being mature plants).

Stated Purpose of the Amendment

According to the amendment:

In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol. . . .In the interest of the health and public safety . . . marijuana should be regulated in a manner similar to alcohol.

Overview

The amendment allows people age 21 or older to:

1. possess, use, consume, display, purchase, or transport marijuana accessories or one ounce or less of marijuana (but bars open and public consumption that endangers others);

2. possess, grow, process, or transport up to six marijuana plants, with three or fewer being mature, flowering plants (but only in an enclosed, locked space not open to the public and not made available for sale);
3. give one ounce or less of marijuana, for free, to someone at least age 21; and
4. help someone age 21 or older to do any of these acts.

The amendment does not:

1. (a) require employers to permit or accommodate marijuana use, possession, or related actions in the workplace or (b) prohibit employers from restricting employee use of marijuana;
2. allow driving under the influence of, or while impaired by, marijuana; or
3. prohibit a person, employer, school, hospital, detention facility; corporation, or any other entity that occupies, owns, or controls a property from prohibiting or otherwise regulating marijuana use, possession, or related actions on that property.

Among other things, the amendment also:

1. specifies that it does not limit the privileges or rights of a medical marijuana patient, primary caregiver, or entity licensed under the state's medical marijuana law;
2. prohibits operating a medical marijuana center on the same premises as a retail marijuana store;
3. requires or permits localities to adopt ordinances or regulations on certain matters and, subject to certain procedures, allows a locality to prohibit the operation of a marijuana establishment by ordinance or a ballot measure.

The amendment provides for the licensing of four types of marijuana establishments: cultivation, testing, product manufacturing, and retail facilities. It requires the legislature to impose an excise tax on marijuana sold by cultivation facilities to product manufacturing facilities or retail stores. The rate is currently set at 15%. The first \$40 million of revenue from this tax is allocated to public school capital construction. As a result of a 2013 ballot proposition, consumers also pay a 10% sales tax for retail purchases, in addition to the standard 2.9% state sales tax and any local sales taxes (see the Department of Revenue's [website](#) for more details).

On December 10, 2012, Colorado Governor John Hickenlooper signed an executive order formalizing the amendment as part of the state constitution (Colorado Const. Art. 18, § 16). The governor also announced the creation of a task force on the amendment's implementation. The task force released its [final report](#) in March 2013.

Regulations

The amendment requires the Colorado Revenue Department to adopt implementing regulations on several matters, such as licensing requirements for marijuana businesses. The department adopted final [retail marijuana regulations](#) on September 9, 2013. They address, among other things:

1. licensure requirements and procedures;
2. the licensed premises (e.g., limited access areas and approval requirements for material alteration of the premises);
3. specific requirements for each type of establishment (e.g., customer age verification and inventory tracking requirements for retail stores);
4. transport and warehousing;
5. business records and reporting;
6. labeling, packaging, and product safety;
7. signage and advertising; and
8. enforcement.

Various provisions in the regulations are meant to prevent minors' access to marijuana. For example, retail stores:

1. must ensure that products are in child-resistant containers (R 1007);
2. must not use packaging, signage, or advertising that uses cartoon characters or otherwise specifically targets individuals under age 21 (R 1001, R 1112); and
3. may only use television, radio, print media, or internet advertising if they have reliable evidence that no more than 30% of the audience or readership is reasonably expected to be under age 21 (R 1104 to R 1107).

2013 Legislation

In 2013, the Colorado legislature enacted legislation to implement Amendment 64 and make additional changes in the state's marijuana laws (see [H.B. 13-1317](#), which primarily addresses marijuana businesses; [H.B. 13-1318](#), which primarily address tax issues; and [S.B. 13-283](#), which addresses miscellaneous issues, including requiring a drug policy task force to recommend changes in criminal law needed to conform to Amendment 64). (Summaries of these laws are available on the legislature's website; click "Digest" on the bill websites linked above.)

WASHINGTON

In 2012, approximately 55.7% of Washington voters approved [Initiative 502](#) (I-502), which allows adults age 21 or older to purchase, for their personal use, up to one ounce of usable marijuana, 16 ounces of a marijuana-infused product in solid form, or 72 ounces of a marijuana-infused product in liquid form. I-502 also allows retailers licensed through the Liquor Control Board to sell marijuana (see the board's [website](#) for information about I-502's implementation, including frequently asked questions and a fact sheet).

Stated Intent of I-502

I-502 states that:

The people intend to stop treating adult marijuana use as a crime and try a new approach that:

- (1) allows law enforcement resources to be focused on violent and property crimes;
- (2) generates new state and local tax revenue for education, health care, research, and substance abuse prevention; and
- (3) takes marijuana out of the hands of illegal drug organizations and brings it under a tightly regulated, state-licensed system similar to that for controlling hard liquor.

I-502 "authorizes the state Liquor Control Board to regulate and tax marijuana for persons twenty-one years of age and older, and add a new threshold for driving under the influence of marijuana."

Overview

As with Colorado's amendment, Washington's initiative provides for the regulation of marijuana production, sale, and possession in a manner similar to alcohol. As in Colorado, Washington's initiative applies only to people age 21 or older. Unlike Colorado, Washington does not allow people to grow their own marijuana for recreational use.

The initiative prohibits consuming, or opening packages containing, marijuana or products containing marijuana in view of the general public.

It provides for licensing of marijuana producers, processors, and retailers, and establishes various rules regarding such licensees. For example, it prohibits licensing of premises within 1,000 feet of the perimeter of the grounds of various establishments, including elementary and secondary schools, playgrounds, recreation centers or facilities, child care centers, public parks, public transit centers, libraries, or arcades that admit people under age 21.

The initiative provides for the imposition of a 25% excise tax on marijuana sales between producers and processors, from processors to retailers, and from retailers to consumers. The retail tax is in addition to other applicable state and local taxes. The initiative specifies how the excise tax revenue, in addition to licensure fees and penalties, must be disbursed. For example, set amounts are dedicated to substance abuse prevention and related purposes.

The initiative establishes various advertising restrictions for marijuana businesses. For example, it prohibits advertising on or in public transit vehicles, public transit shelters, and within 1,000 feet of various establishments where children might gather. Among other things, it also (1) establishes specific parameters for driving under the influence of marijuana and (2) requires the state Liquor Control Board to adopt implementing rules on various topics.

Required Cost-Benefit Evaluations. I-502 requires the Washington State Institute for Public Policy to conduct cost-benefit evaluations of the law's implementation. The evaluation must address several specific issues related to (1) public health, (2) public safety, (3) use and abuse rates, (4) economic impact on the public and private sector, (5) criminal justice impact, and (6) state and local agency administrative costs and revenues. For example, the evaluation must address the health costs associated with (1) marijuana use and (2) criminal prohibition of marijuana.

A preliminary report, along with legislative recommendations, is due September 1, 2015; a final report with recommendations is due September 1, 2017. Subsequent reports are due in 2022 and 2032. (More information on the required evaluation can be found [here](#).)

Regulations

The Washington State Liquor Control Board has adopted marijuana licensing [rules](#) implementing I-502. The rules generally cover topics similar to Colorado's laws (see [highlights](#) of the rules and a [frequently asked questions page](#) on the board's website).

In addition to I-502's restrictions on licensed premises location and advertising as noted above, other provisions of the rules concern preventing minors from accessing marijuana or being exposed to marijuana-related advertising. For example, marijuana-infused products meant to be eaten, swallowed, or inhaled must be packaged in child-resistant packaging (Wash. Admin. Code § 314-55-105). Also, marijuana advertising, and labels of usable marijuana and marijuana-infused products, must not:

1. be designed to appeal to people under age 21 (Wash. Admin. Code § 314-55-155);
2. contain statements or illustrations depicting a person under age 21; or include objects such as toys, characters, or cartoon characters suggesting the presence of a child, or any other depiction designed to especially appeal to people under age 21.

2013 DOJ MEMORANDUM

In August 2013, Deputy Attorney General James M. Cole sent a [memorandum](#) to all U.S. Attorneys, entitled "Guidance on Marijuana Enforcement." The memo updated DOJ guidance on this topic, "in light of state ballot initiatives" legalizing marijuana under state law.

The memo states that DOJ is committed to (1) enforcing the federal Controlled Substances Act (under which marijuana remains an illegal drug) and (2) using its limited resources "to address the most significant threats in the most effective, consistent, and rational way." It notes that in relation to state medical marijuana laws, DOJ has focused "its efforts on certain enforcement priorities that are particularly important to the federal government," and that these priorities will continue to guide its response to state laws legalizing marijuana. These priorities include preventing:

1. marijuana distribution to minors;
2. marijuana sales revenue from going to criminal enterprises, gangs, and cartels;
3. the diversion of marijuana to other states from states that have legalized it;
4. state-authorized marijuana activity from being used as a pretext for trafficking of other illegal drugs or activity;
5. violence and firearms use in marijuana cultivation and distribution;
6. drugged driving and worsening other adverse public health consequences due to marijuana use;
7. marijuana cultivation on public lands and the attendant public safety and environmental dangers; and
8. marijuana possession or use on federal property.

According to the memo, “[o]utside of these enforcement priorities, the federal government has traditionally relied on state and local law enforcement agencies to address marijuana activity through enforcement of their own narcotics laws.”

DOJ says its updated guidance rests on its expectation that state and local governments enacting these laws “will implement strong and effective regulatory and enforcement systems that will address the threat those state laws could pose to public safety, public health, and other law enforcement interests.” According to the memo, if these laws are implemented with “strong and effective regulatory and enforcement systems to control the cultivation, distribution, sale, and possession of marijuana, conduct in compliance with those laws and regulations is less likely to threaten” the priorities listed above. If a state maintains such a “robust” regulatory system, state and local enforcement of state law “should remain the primary means of addressing marijuana-related activity.” But if state enforcement efforts are inadequate, “the federal government may seek to challenge the regulatory structure itself in addition to individual enforcement actions[.]”

The memo also states that it is “intended solely as a guide to the exercise of investigative and prosecutorial discretion” and “does not alter in any way DOJ’s authority to enforce federal law, including federal laws relating to marijuana, regardless of state law.”

According to the memo's accompanying [press release](#), based on assurances that Colorado and Washington "will impose an appropriately strict regulatory system, the Department has informed the governors of both states that it is deferring its right to challenge their legalization laws at this time."

For more information on this memo and a more detailed discussion of the interaction of state marijuana legalization laws and federal law, see this Congressional Research Service [report](#).

SOURCES AND ADDITIONAL INFORMATION

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Department of Justice, Justice Department Announces Update to Marijuana Enforcement Policy (August 29, 2013), available at <http://www.justice.gov/opa/pr/2013/August/13-opa-974.html>.

Washington State Institute for Public Policy, Initiative 502 Benefit-Cost Evaluation (June 2013), available at <http://www.wsipp.wa.gov/Files/I-502-Study-Background>.

Washington State Liquor Control Board, I-502 Implementation, available at <http://lcb.wa.gov/marijuana/I-502>. (This site includes links to I-502 and the implementing rules, frequently asked questions, a fact sheet, and several related documents.)

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